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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DONALD & KRISTI GRAVELET-
10 BLONDIN,

11 Plaintiffs,

12 v.

13 SGT. JEFF SHELTON, *et al.*,

14 Defendants.
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Case No. C09-1487RSL

ORDER DENYING MOTION FOR
PARTIAL SUMMARY JUDGMENT
REGARDING QUALIFIED
IMMUNITY DEFENSE

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17 This matter comes before the Court on plaintiffs' motion for partial summary judgment
18 dismissing the qualified immunity defense asserted by defendant Sergeant Jeff Shelton with
19 respect to plaintiff Donald Gravelet-Blondin's excessive force claim. The motion does not
20 address his other claims, including claims that the officers arrested him and maliciously
21 prosecuted him without probable cause. Nor does it address Kristi Gravelet-Blondin's claim for
22 outrage.

23 As an initial matter, the parties dispute the standard by which the Court should evaluate
24 this motion. Defendants contend that the Court should construe the facts in the light most
25 favorable to them as the non-moving parties. Plaintiffs argue that the Court must determine
26 whether the facts alleged, in the light most favorable to the party asserting the injury, show that
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1 the officer's conduct violated a constitutional right. Plaintiffs rely on *Saucier v. Katz*, 533 U.S.
2 194, 201 (2001) for that proposition, but the Supreme Court in a subsequent case explained that
3 its application may be inappropriate where, as here, the facts of plaintiffs' claim are not yet
4 developed. Pearson v. Callahan, ___ U.S. ___, 129 S. Ct. 808, 819-20 (2009). Moreover, the
5 Ninth Circuit has explained that when the issue of qualified immunity is raised through a motion
6 for summary judgment, "the reviewing court must assume the nonmoving party's version of the
7 facts to be correct." Schwenk v. Hartford, 204 F.3d 1187, 1193 n.3 (9th Cir. 2000) (citing Liston
8 v. County of Riverside, 120 F.3d 965, 977 (9th Cir. 1997)); Munger v. City of Glasgow Police
9 Dep't, 227 F.3d 1082, 1087 (9th Cir. 2000). Although those decisions pre-date *Saucier*, they
10 have not been overruled on that point. Nor have plaintiffs cited any cases in which courts have
11 granted summary judgment to plaintiffs on a qualified immunity defense while construing the
12 facts in the light most favorable to them. While the application of that standard is warranted
13 when defendants move to establish the defense, as is typically the case, it makes little sense to
14 apply it when plaintiffs move for summary judgment early in the proceedings. Accordingly, the
15 Court will apply a traditional summary judgment standard and evaluate the facts in the light most
16 favorable to the nonmoving parties.

17 Under that standard, it is clear that plaintiffs are not entitled to summary judgment. It is
18 undisputed that Sergeant Shelton and other officers responded to a residential house where an
19 elderly man was attempting to commit suicide. The officers were told that the man had a firearm
20 and kept it with him "at all times," but they were initially unable to locate the weapon at the
21 scene. Declaration of Sergeant Jeffrey Shelton (Dkt. #16) ("Shelton Decl.") at ¶ 2. The officers
22 ordered the man to step out of his vehicle and show his hands, but he refused to show his hands.
23 Another officer tased the man. While the officers were struggling with him, Mr. Gravelet-
24 Blondin, dressed in a t-shirt, shorts, and slippers, approached to check on his neighbor. The
25 parties' descriptions of what occurred after that point differ. Plaintiff contends that Sergeant
26 Shelton yelled at him to get back, plaintiff "froze" where he was standing, which was
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1 approximately 37 feet away from his neighbor, and Sergeant Shelton ran towards him and tased
2 him. Declaration of Donald Gravelet-Blondin (Dkt. #12) at ¶¶ 5-7. According to Sergeant
3 Shelton, plaintiff refused multiple commands to stop, continued to approach the scene, and came
4 within fifteen feet of the man being subdued. Shelton Decl. at ¶¶ 9-14. At that point, Sergeant
5 Shelton tased him. Viewing the facts in the light most favorable to defendants, the Court will
6 not conclude that Sergeant Shelton's qualified immunity defense fails as a matter of law.

7 For all of the foregoing reasons, the Court DENIES plaintiffs' motion for partial summary
8 judgment. (Dkt. #10).

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10 DATED this 8th day of March, 2010.

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14 Robert S. Lasnik
United States District Judge
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